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ABSTRACT

The handbook is intended to provide practitioners with information on establishing and organizing a Human Growth and Development program in agencies and facilities which provide training to developmentally disabled persons. The handbook discusses the legal foundation (Florida law) for establishing the program as well as specific methods for teaching Human Growth and Development skills. The first chapter considers habilitation planning for human growth and development with sections on the human growth and development matrix (with domains of social identify, physiological identity, and health/hygiene) organized by six difficulty levels and behavioral indicators: goal development, evaluation of goals, implementing the habilitation plan, short-term objectives, lesson plans, and teaching methods. Chapter two looks at policies and support systems with an emphasis on Florida and includes sample agency policy statements on masturbation and privacy. The third chapter examines legal foundations of a human growth and development program with sections on client rights, competency, consent, informed consent, and questions and answers. Appended are a preassessment informal interview form, an annual habilitation plan and goal evaluation checklist, a lesson plan form, a sample lesson plan, and the texts of relevant Florida statutes. (DB)

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Being Human

A Handbook in human growth and development for the developmentally disabled.

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BEING HUMAN: A HANDBOOK IN HUMAN GROWTH AND DEVELOPMENT

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BEING HUMAN: A HANDBOOK IN HUMAN GROWTH AND DEVELOPMENT

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BEING HUMAN: A Handbook in Human Growth and Development

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PREFACE

One of the most essential qualities of being human is the ability to get along with other people. This ability to interact appropriately with others is held in high esteem in our society. Training developmentally disabled individuals to interact with other people is a component of the skill area generally known as Human Growth and Development. Human Growth and Development is a lifelong process of growth which is influenced by biological maturation and the individual's environment. Human Growth and Development is expressed through various individual attitudes, values and behaviors. In essence, Human Growth and Development is the adjustment of humans to life, to living life - to being human.

Sexual feelings are an important part of being human. This is as true for a developmentally disabled person as it is for anyone else. Sexual feelings are expressed not only through sexual acts, but also through many kinds of social interactions. In these interactions, people seek not only sexual fulfillment but also warmth and affection from others.

Complex rules of conduct govern social interactions. Unlike most other people, many developmentally disabled individuals do not know these rules and have not been taught to exercise good judgment in their social interactions with others. Attempts at seeking affection are often labeled as "sexual acting out behavior" and are dealt with through behavioral intervention techniques.

In the early 1960's, the movement to teach sex education to the developmentally disabled focused on cleanliness, morality and good health habits, avoiding the more controversial biological facts including anatomical, genital and reproductive information. In other words, these training curriculums talked around sex rather than about it.

In the 1970's, previously avoided biological facts began to appear in curriculum content and materials. Sex education began stressing the prevention of pregnancy, sexual exploitation, and venereal disease. The controversial aspects of these programs caused sex education to be set apart from regular training programs provided to clients, thus artificially separating sexuality from the rest of life.

Sex education is an important component of any Human Growth and Development program. Other components must include the individual's ability to care for himself or herself and the ability to relate to and identify with other people.

As professionals in the field of developmental disabilities, we have placed major emphasis on training clients to acquire skills in such areas as functional academics, motor development, and vocational and community readiness in preparation for as independent a life as possible. As necessary as these skills may be, they are not sufficient to fully prepare clients for community living.

Many clients are terminated from their community jobs or placements not because they lack vocational or daily living skills, but because of poor hygiene, poor personal habits, poor

decision making abilities, or an inability to relate appropriately to others.

The problem in the past has not been a lack of information about Human Growth and Development, but rather the lack of a unified approach to training. Trainers and teachers have often been presented with a bewildering array of suggestions and techniques that may or may not have taken into account the individual needs of clients.

Being Human: A Resource Guide in Human Growth and Development, is a companion to this handbook. It provides a mechanism for professionals to determine the resources necessary to develop programming which emphasizes life adjustment. This handbook, Being Human: A Handbook in Human Growth and Development provides the reader with information on establishing and organizing a Human Growth and Development program in the agencies and facilities which provide training to developmentally disabled individuals. The Handbook also discusses the legal foundation for establishing the program as well as specific methods for teaching Human Growth and Development skills. While both the Resource Guide and this Handbook build upon extensive information and research in the skill areas of Human Growth and Development and sex education, they are not HRS manuals, nor do they cover each and every point of concern in these areas.

We hope that these materials will help the professionals in the field develop a comprehensive curriculum in Human Growth and Development which emphasizes how rich and full life can be for developmentally disabled people.

CHAPTER ONE

HABILITATION PLANNING FOR HUMAN GROWTH AND DEVELOPMENT

The Developmental Services Program Office of the Florida Department of Health and Rehabilitative Services (HRS) is responsible for planning, implementing and evaluating programs and services for individuals with developmental disabilities throughout Florida.

The process by which a person becomes eligible for services from the Developmental Services Program begins with an evaluation conducted by a Diagnosis and Evaluation (D&E) Team in the district in which that person resides. This team must include a clinical social worker, an academic consultant, a psychologist and a registered nurse. Once eligibility is determined by the D&E Team, an Habilitation Planning Committee (HPC) meets to develop the initial Habilitation Plan.

The Habilitation Plan authorizes client services and is initially based on the results of the evaluations conducted by the D&E Team. The assigned Developmental Services social worker utilizes the information found in the Habilitation Plan to determine which services can best meet that client's needs.

Once the most appropriate service provider is identified and the client enters that program, the provider begins the client's programming process within 30-45 days after admission. This

habilitation programming process is a continuous cycle which includes the following:

a) a formal assessment of the client's skills and service needs. This involves the use of written check lists and other instruments which assist the instructor or programmer in developing goals, objectives and activities for that client;

b) the development of annual goals and short term objectives describing client needs within each measurement category or skill area in the Habilitation Plan;

c) the provision of training programs designed to achieve the client's annual goals and short term objectives;

d) the collection and analysis of data describing the client's response to the training program;

e) a monthly progress report summarizing the results of data collection and the observations of the staff during the training program;

f) an annual reassessment by all the client's service providers to determine his or her present performance level and progress over the previous year; and,

g) the use of that reassessment information to prepare a new annual Habilitation Plan.

One of the measurement categories or skill areas identified in the client's Habilitation Plan is "Human Growth and Development". The Human Growth and Development Matrix (See Matrix Insert), was designed to accomodate all the components of a Human Growth and Development program. The "Matrix" is the foundation of this handbook and its companion, Being Human: A Resource Guide in Human Growth and Development.

The Matrix consists of three broad areas or domains of human activity. These domains are labeled "Social Identity", "Physiological Identity" and "Health and Hygiene." Each of these domains is divided into six levels, with Level I representing the most basic skills and Level VI representing the most complex

skills in a particular domain. Each level contains a number of "steps" which identify skills or behavior to be learned in each of the three domains.

Some clients, due to their youth or degree of disability, will be unable to perform many of the skills identified in Level I of the Matrix. Behaviors that are pre-requisites to attainment of Level I skills in each of the three domains are identified on the Matrix as "Behavioral Indicators."

The following graph depicts the structure of the Human Growth and Development Matrix:

MATRIX STRUCTURE

DOMAINS

	Social Identity	Physiological Identity	Health & Hygiene
LEVEL VI	Step 3 through Step 1	Step 3 through Step 1	Step 2 through Step 1
LEVEL V	Step 7 through Step 1	Step 7 through Step 1	Step 4 through Step 1
LEVEL IV	Step 11 through Step 1	Step 4 through Step 1	Step 7 through Step 1
LEVEL III	Step 11 through Step 1	Step 7 through Step 1	Step 8 through Step 1
LEVEL II	Step 6 through Step 1	Step 4 through Step 1	Step 2 through Step 1
LEVEL I	Step 7 through Step 1	Step 4 through Step 1	Step 6 through Step 1
BEHAVIORAL INDICATORS	Step 16 through Step 1	Step 14 through Step 1	Step 18 through Step 1

Chronological and mental ages are purposely omitted from the Matrix because developmentally disabled persons enter the sequence at their current level of performance, regardless of chronological age, mental age or I.Q.

The design of the Matrix is such that an assessment instrument can be developed from it. The following is an example of an assessment instrument developed from the Matrix. The sample assessment is presented in a behavioral objective format for easy transfer into annual goals and short-term objectives:

USING THE HUMAN GROWTH AND DEVELOPMENT MATRIX
FOR ASSESSMENT INSTRUMENT DEVELOPMENT

SOCIAL IDENTITY LEVEL I (as it appears in Matrix)	SOCIAL IDENTITY LEVEL I-ASSESSMENT (as developed from Matrix)
7. Identifies contemporary family roles and clothing, or roles of members of family unit in the institution and/or the community residential center (e.g. unit director, registered nurse, behavioral specialist, foster grandparent).	7. When presented with five pictures of family members or family unit members in various articles of clothing (e.g. Mother washing car in overalls, Dad cooking with apron on, the family dressed to go out, the unit director in cutoffs . . .), _____ will identify (point to) them.
6. Identifies traditional male family roles and clothing.	6. When presented with pairs of pictures showing males & females dressed in clothing associated with traditional roles (e.g. woman wearing a dress caring for a child and man with briefcase going to work), _____ will identify (point to) the man.

MATRIX

LEVEL	SOCIAL IDENTITY	PHYSIOLOGICAL IDENTITY	HEALTH & HYGIENE
VI	3. Recognizes possible changes in lifestyle (e.g. retirement, unemployment, use of leisure time). 2. Identifies emotional changes which might occur with age. 1. Identifies changes in family patterns (e.g. loss of parents, loss of spouse or children) and the need for adjustment to changes in family patterns.	3. Identifies possible deterioration of bodily systems due to aging process and possible need to adapt lifestyle. 2. Identifies changes which occur with menopause. 1. Identifies physiological changes which occur with age.	3. Recognizes the increased need for regular medical attention with aging. 1. Recognizes the increased need to maintain proper nutrition and adequate exercise during later years.
V	7. Identifies responsibilities associated with child bearing and child rearing (e.g. social, financial, legal, educational) and understands the benefits and disadvantages of having children. 6. Recognizes the social costs of illigitimacy. 5. Recognizes the existence of prostitution and identifies the social and legal restraints and consequences that accompany it. 4. Recognizes the existence of bisexuality and identifies the social and legal restraints and consequences that accompany it. 3. Recognizes the existence of male and female homosexual relationships and identifies the social and legal restraints that accompany such relationships. 2. Recognizes the many possible relationships between men and women (e.g. casual relationships, working relationships, love relationships). 1. Identifies own legal rights and responsibilities (e.g. the right to vote, age of majority, right not to be involuntarily sterilized).	7. Identifies the stages of child development. 6. Recognizes possible need for genetic counselling. 5. Identifies procedures for obtaining and utilizing various birth control methods. 4. Identifies the reliability and possible side effects of various birth control methods (e.g. abstinence, the pill, IUD, diaphragm, rhythm method, condoms, sterilization, abortion). 3. Understands the birth process (e.g. stages of labor and delivery). 2. Identifies the stages of embryonic maturation. 1. Identifies symptoms of pregnancy.	4. Recognizes the need for regular medical care during pregnancy. 3. Recognizes the importance of good nutrition during pregnancy. 2. Identifies and performs proper procedures involved in basic first aid (e.g. pressure to stop bleeding). 1. Identifies and performs the proper procedures involved in child care.
IV	11. Understands the termination of relationships (e.g. friendships, engagements, marriages). 10. Recognizes the financial, emotional, and social and legal responsibilities of marriage and cohabitation. 9. Recognizes and understands the responsibilities, advantages and disadvantages of living with someone when not married and when married. 8. Recognizes and understands the responsibilities, advantages and disadvantages of being single. 7. Recognizes and understands the concept of love relationships. 6. Recognizes the concepts of going steady and being engaged. 5. Recognizes and understands the social and legal consequences of alcohol and illegal drug usage. 4. Recognizes and understands the social and legal consequences of sexual misconduct. 3. Recognizes appropriate and inappropriate sexual advances and knows how to respond appropriately to such advances. 2. Identifies interactions which might occur between couples (e.g. touching, holding hands, kissing, petting and sexual relations). 1. Identifies acceptable and unacceptable dating behavior (e.g. curfews, manners).	4. Understands that every instance of intercourse can possibly result in pregnancy. 3. Identifies and understands the process of conception as the union of egg and sperm during intercourse resulting in the development of a baby. 2. Understands the mechanics of sexual intercourse (e.g. foreplay, erection, lubrication, entry, orgasm, ejaculation, fertilization). 1. Identifies the onset of sexual drive during puberty (e.g. curiosity about one's body, sexual urges, masturbation, emotional changes, curiosity about others' bodies).	7. Recognizes the need for good nutrition, adequate exercise and adequate sleep. 6. Recognizes the need for annual dental examination. 5. Recognizes the need for annual breast and gynecological examination. 4. Identifies and understands the harmful effects of alcohol, illegal drugs and tobacco on the body. 3. Identifies the causes, symptoms and methods of prevention of venereal disease and recognizes the need for immediate medical attention by a physician. 2. Recognizes the need for immediate medical attention by a physician (e.g. temperature, infections, toothaches, serious injury). 1. Identifies appropriate treatment for minor symptoms which do not need medical attention (e.g. menstrual cramps, headache, colds, nosebleeds, skinned knee) and can treat according to proper method.
III	11. Recognizes that peer pressure and curiosity can make one want to use alcohol, illegal drugs, or engage in inappropriate behavior, and knows how to respond to such situations appropriately. 10. Identifies socially dangerous situations and identifies appropriate responses to such situations (e.g. call police, find an adult in authority, call unit director). 9. Identifies socially appropriate sitting and posturing. 8. Identifies socially appropriate clothing for specific social situations. 7. Recognizes appropriate and inappropriate hugging, kissing, touching, as it relates to family members, friends, teachers and members in family unit or ward. 6. Identifies appropriate social interaction during various social activities (e.g. conversation, participation at parties, visiting, church, funerals, shopping). 5. Identifies appropriate social activities with peers. 4. Recognizes roles in relation to one another (e.g. husband/wife, boyfriend/girlfriend, unit director/registered nurse). 3. Identifies traits which make people attractive (e.g. personality, appearance, sincerity, honesty, dependability, common interests). 2. Identifies existing traditional and contemporary masculine and feminine roles according to social treatment, etiquette, public restrooms, and clothing. 1. Recognizes that people can be divided into groups according to sex.	7. Identifies and understands the function of the digestive system (e.g. appetite, production of saliva, digestion, function of esophagus, stomach, small intestine, indigestion and gas, elimination--urination, defecation, perspiration, regurgitation--not necessarily in those terms). 6. Identifies and understands the functions of the male and female reproductive systems. 5. Recognizes and understands the occurrence of nocturnal emissions, ejaculations, and erections. 4. Recognizes and identifies gradual changes which occur in puberty (e.g. girls: menstruation, change in body shape, larger breasts; boys: change in voice, growth in penis, ejaculation, beard development; in both cases: acne, underarm and pubic hair, body odor, capacity to reproduce). 3. Recognizes that some people grow faster than others and that some people reach puberty faster than others. 2. Recognizes that death occurs when the body ceases to function. 1. Identifies and understands stages of human development (e.g. infancy, childhood, adolescence, adulthood, old age).	8. Identifies alcohol and all other drugs as being potentially dangerous substances. 7. Recognizes need to shave facial or other body hair and performs such procedures. 6. Recognizes possible need for use of cosmetics and uses cosmetics appropriately. 5. Recognizes possible need for acne medication and uses such medication properly if appropriate. 4. Recognizes the aspects of menstruation (e.g. possible cramps, procedures for changing napkins/tampons). 3. Recognizes the onset of body odor and applies deodorant regularly. 2. Recognizes the importance of daily underarm, facial and genital cleanliness and properly performs procedures. 1. Recognizes the importance of regular hair care and properly performs procedures to maintain hair cleanliness.

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MATRIX

LEVEL	SOCIAL IDENTITY	PHYSIOLOGICAL IDENTITY	HEALTH & HYGIENE
II	6. Recognizes the need for social self-protection (e.g. not talking to strangers, not opening doors to strangers, not taking candy from or riding with strangers. 5. Recognizes possible changes in or termination of relationships (e.g. through temporary anger, changes in occupation, moving away, death). 4. Recognizes and understands relationship of self to peers and friends (classmates, acquaintances, boyfriends, girlfriends). 3. Recognizes and understands relationship of self to authority figures (e.g. parents, teachers, unit directors). 2. Identifies situations which bring about these various emotions (from #1). 1. Identifies different human emotions (e.g. happy, angry, sad).	4. Recognizes the functions of the male genitalia. 3. Recognizes the functions of the female genitalia (e.g., reproduction, menstruation). 2. Recognizes the functions of body sensory system (e.g., smell, touch, sight, hearing, taste). 1. Recognizes the functions of the digestive system (e.g., ingestion, digestion, elimination).	2. Recognizes the importance of daily bathing and performs proper procedures to maintain personal cleanliness. 1. Recognizes the possible need for medical attention with the onset of injury or physical discomfort.
I	7. Identifies contemporary family roles and clothing, or roles of members of family unit in institution and/or community residential center (e.g. unit director, registered nurse, behavioral specialist, foster grandparent). 6. Identifies traditional male family roles and clothing. 5. Identifies traditional female family roles and clothing. 4. Identifies other persons by sex (boy/girl; man/woman). 3. Recognizes other relatives or persons outside immediate family or family unit (e.g. grandparents, aunts, uncles, unit director, teacher, foster grandparent, registered nurse). 2. Recognizes immediate family or family unit members (e.g. mother, father, siblings, foster parents,	4. Identifies differences in own body from that of average person (e.g., spasticity, paralysis). 3. Identifies female body parts (e.g. breasts, vagina). 2. Identifies male body parts (e.g. penis, testes). 1. Identifies parts of body.	6. Recognizes the need to change dirty clothing. 5. Recognizes the need to maintain bodily cleanliness. 4. Identifies and performs simple care of the hair. 3. Identifies and performs proper procedures following elimination of bodily wastes. 2. Identifies and performs proper procedures for oral hygiene (e.g. toothbrushing, flossing). 1. Identifies/performs proper procedures for care of one's skin (e.g. bathes, washes face and hands).
BEHAVIORAL INDICATORS			
	16. Distinguishes threatening situations by staying close to authority figures (e.g. during fire drills, etc.) 15. Seeks known pleasurable situations (e.g. stops at soda machine, readily gets into cars for a ride)	14. Models behavior of others. 13. Attempts to manipulate others' genitals or breasts. 12. Allows others to touch and/or manipulate his/her genitals and/or breasts. 11. Female is observed sitting in a manner which stimulates	18. Demonstrates to trainer/parents his/her need for bodily cleanliness (e.g. gives tissues to trainer when runny nose occurs, gets nail clippers, wash cloth) 17. Eats different foods using appropriate utensils. 16. Assists trainer/parent with body cleanliness (e.g., bathing, washing face, hands).
	14. Follows simple one-step commands (e.g. "look at me", "sit down", "stand up", "down please", etc.) 13. Responds to command "come", accompanied by gestures. 12. Seeks affection from anyone entering the room (e.g. moving closely toward strangers' faces, hugging closest body part) 11. Laughs when tickled. 10. Laughs in response to other laughing (imitation). 9. Demonstrates a particular preference toward a specific peer or family unit member (e.g. consistently singles that person from a group or lifts arms toward that person) 8. Responds positively to significant others (e.g. smiles, waves, coos, hugs). 7. Responds to gentle touch of others (e.g. coos, moves closer toward person touching, waves, lifts arms). 6. Turns head in direction of sound. 5. Cries or becomes visibly upset (lips tremble, pout, face changes color) in response to a negative or unpleasant situation. 4. Reacts negatively (e.g. temporarily stops/decreases activity, cries) to harsh toned sounds. 3. Responds positively (e.g. smiles, coos, waves) to soft toned sounds. 2. Startles in response to sudden loud noises (e.g. bells, claps). 1. Tolerates presence of another person.	10. Female touches/rubs breast nipples. 9. Female fondles/rubs genitalia displaying an orgasmic response (e.g. body rigidity, tremor, immediately becoming languid). 8. Male fondles genitals, sometimes ejaculating. 7. Male fondles genitals, achieving erection. 6. Uses body parts as they relate to function (e.g. picking up objects with hands, lifts body using arms and legs, pulls to a standing position using hands and arms. 5. Allows trainer/parent/nurse to touch genital area (e.g. during bath, showering or medication application). 4. Rubs or touches genital area (other than during functional use as in #3) 3. Uses or is aware of own body parts (male/female specific) as they relate to function (e.g. male holds penis during urination, female tolerates bra for support, adjusts Kotex during menstruation). 2. Manipulates external body parts (e.g. plays with fingers, toes, feet). 1. Will tolerate touch from another person (e.g. pat on the back, stroking face).	15. Assists trainer/parent with toothbrushing (e.g. attempts any of the steps necessary in this task). 14. Assists trainer/parent with hair care (e.g. attempts to comb, brush or wash own hair). 13. Spears food with fork. 12. Toilets self when necessary, with infrequent accidents. 11. Indicates by gesture or vocalization the need to go to the toilet. 10. Has less than two toileting accidents each day when placed on a regular toileting program. 9. Eats with spoon. 8. Indicates to parent/trainer the need to have dry clothing (e.g. leads trainer to dresser or clothing storage area, removes soiled/wet clothing, brings clothing to trainer). 7. Stays on toilet or bedpan when placed and supervised. 6. Goes to appropriate sink or bathtub when requested (using visual and verbal cues if necessary). 5. Tolerates/permits hair care procedures by trainer/parent. 4. Tolerates/permits toothbrushing by trainer/parent. 3. Retains all food from spoon without spitting, drooling. 2. Indicates that clothing is wet or soiled (e.g. cries, touches soiled or wet area, pulls at article that is soiled or wet). 1. Allows trainer/parent to bathe or shower him/her.

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5. Identifies traditional female family roles and clothing.	5. When presented with pairs of pictures showing males & females dressed in clothing associated with traditional roles (e.g. woman wearing a dress caring for a child and man with briefcase going to work), _____ will identify (point to) the woman.
4. Identifies other persons by sex (boy/girl; man/woman).	4. When presented with a total of six pictures, (3 male, 3 female), _____ will correctly identify (point to) the males and females.
3. Recognizes other relatives or persons outside immediate family or family unit (e.g. grandparents, aunts, uncles, unit director, teacher, foster grandparent, registered nurse).	3. When presented with pictures of or the presence of other relatives outside the family or family unit (e.g., grandparents, aunts, uncles, unit director, teacher, foster grandparent, registered nurse, _____ will identify (point to) at least two non-family members.
2. Recognizes immediate family or family unit members (e.g. mother, father, siblings, foster parents).	2. When presented with pictures of or the presence of members of immediate family or family unit (e.g. mother, father, siblings, foster parents), _____ will identify (point to) at least two family members.
1. Identifies or recognizes self or mirror image (e.g., name, sex).	1. When presented with a mirror image or photograph of self, _____ will correctly identify (point to) self.

Although the Matrix provides a strong foundation for developing the content for a good Human Growth and Development assessment, not <u>all</u> necessary skills in Human Growth and

Development are found in the Matrix. The assessment instrument must be individualized and used in conjuction with information from other skill areas to reflect unique family, community and societal values and mores.

The Matrix is based, in part, on a developmental model of psycho-sexual growth. However, each step within each level is not necessarily a pre-requisite to the next step. It is important to recognize that not all client deficits as identified on an assessment instrument need to be remedied, as few persons need to possess all of the skills listed. For example, a male client clearly does not need to learn to care for himself during a menstrual cycle. The evaluator could record a "not applicable" or "N/A" beside such assessment items. Thirty year old clients do not need to learn about bodily changes that accompany puberty. A short statement such as "not applicable due to _____'s age" would be an appropriate comment.

Other less obvious factors such as the client's environment, chronological age, family status, relationship with peers, etc., may be part of the determination of which pre-requisite items are inappropriate. In order to determine these factors, an informal pre-assessment check list or interview form should be developed so that others (parents, teachers, etc.) who interact with the client can provide the additional subjective (observational) information needed. A sample "Preassessment Informal Interview Form" is found on the next page and in Appendix A.

HUMAN GROWTH AND DEVELOPMENT
PREASSESSMENT INFORMAL INTERVIEW FORM

Client_____ Interviewer_____

Persons Interviewed	Relationship to Client	Date
A._____	_____	_____
B._____	_____	_____
C._____	_____	_____

1. What behaviors, appearances, or characteristics does the client have that cause others to avoid or reject the client?

2. What skills do the primary caretakers consider most urgent for the client to learn?

3. Is someone at home or school doing something for the client that the client should be doing for himself or herself?

4. What social skills are most urgently needed for the client's successful social functioning at home and in the community today?

5. What health/hygiene skills are most urgently needed for the client's independent functioning at home and in the community today?

6. What knowledge about physiology and development are most urgently needed for successful functioning at home and in the community today?

7. Where will the client be living in three to five years from today?

   a. What social skills will help the most to make the client independent and socially accepted within that environment?

   b. What health/hygiene skills will help the most to make the client independent and socially accepted within that environment?

   c. What knowledge about physiology (biological facts) and development will help the most to make the client independent and socially accepted within that environment?

GOAL DEVELOPMENT

The Preassessment Informal Interview Form should be completed prior to the annual Habilitation Planning Committee (HPC) meeting. Interviews with other parties (parents, teachers, etc.) can be conducted in person, via telephone, or though correspondence. When appropriate it is also important to interview the client to determine his or her feelings and interests in areas addressed on the Human Growth and Development Matrix. A client interview form or check list could easily be developed for this purpose.

The Preassessment Informal Interview Form should be used in conjunction with the formal assessment results to identify weaknesses or deficiencies in the area of Human Growth and Development. Deficits which require remedial action will then be stated as annual goals on the Habilitation Plan. Annual goals must be written to include:

1) Who is the learner?
2) What is the observable behavior to be learned?
3) Under what conditions will this behavior occur?

Some examples of annual Habilitation Plan goals in the area of Human Growth and Development are included on the next page.

EXAMPLES OF ANNUAL HABILITATION PLAN GOALS

1) Given a sanitary napkin or pad, _____ will put it on correctly.

(Human Growth and Development Matrix
Health & Hygiene Domain-Level III, Step 4)

2) When presented with four birth control methods (the "pill", an IUD, a diaphragm, and a condom) and asked, "Which is the most effective method?", _____ will identify (point to) "the pill" as the most effective method.

(Human Growth and Development Matrix
Physiological Identity Domain-Level V, Step 4)

3) When presented with four pictures of socially dangerous situations (e.g. attempted rape, assault, stealing, and unwanted touching), _____ will state the correct procedure for handling each situation.

(Human Growth and Development Matrix
Social Identity Domain, Level III, Step 10)

Annual goals should relate to the Long Range Optimal Plan, as found in the client's Habilitation Plan. The Long Range Optimal Plan should describe the type of residence and the types of programs the client will need for increased independence. Typically, the Long Range Optimal Plan is a forecast of client needs three to five years in the future. All Habilitation Plan goals should be related to and directed toward the attainment of the Long Range Optimal Plan.

A simple check list is included to assist the trainer in determing the relevance of annual goals in the skill area of Human Growth and Development. The check list should focus the trainer's attention on those goals which are useful (functional) to the client. The trainer should use a seperate form for each annual goal and circle a "yes" or "no" beside each of the seven questions on the check list. A sample of the following check list, without commentary, can be found in Appendix A.

EVALUATION OF HUMAN GROWTH AND DEVELOPMENT GOALS

The following are considerations in determining the appropriateness of Human Growth and Development goals:

1. Does the client need this particular skill to function as independently as possible at home, at work, or in the community?

   YES NO

COMMENT:
If the skill is one that the client really needs for independent functioning, the usefulness of the goal will be obvious. A good method for checking this is to ask the trainer to state a "common sense" rationale for the goal. Difficulty in stating a simple rationale will be a good indication that the goal is <u>not</u> needed for that client.

2. Will the skill make the client appear more normal (or less deviant) at home, at work, or in the community?

   YES NO

COMMENT:
People who do not successfully conform to society's normal behavior and appearance standards will not be accepted by society. Those goals which will decrease a client's deviancy (inappropriate behavior or appearance) will be the most valuable and will most likely increase the client's social acceptablity at home, at work and in the community.

3. Will the skill need to be performed by another person if the client does not perform it?

   YES NO

COMMENT:
If the situation requires that another person perform the skill to assist the client in functioning, then obviously it is an important skill to be learned by the client. Examples of skill areas for annual goals which should be addressed are: distinguishing between men's and women's rest rooms; changing sanitary napkins; and, looking both ways before crossing the street. Some skills are just as well left unaddressed. Aiding the client to clap his or her hands in time to music, just because the client does not perform this task, may be unimportant. We don't <u>have</u> to clap our hands to music.

4. Does the client, client's family, guardian or caretaker want the client to learn the skill?

YES NO

COMMENT:

Directinvolvementof the guardian or primarycaretaker is desirable because a) the guardian or caretaker is morelikely to carry through with the client's traíning program at home if he or she cansee a direct personal benefit from thatparticular program, and b) because the guardian or caretaker lives with the client on adailybasis, he or she may be aware of many client needs that are not identified on any assessment instrument. For example, a parent could explain that it would help if their son or daughter could learn to use the remote T.V. channel changer instead of calling for help each time he or she wanted to see a different television show. Normally, the use of remote T.V. controls is not an item found on assessment instruments.

5. Would a non-handicapped person of the same chronological age engage in this skill?

YES NO

COMMENT:

Developmentally disabled adults are often incorrectly viewed in terms of their mental age rather than in terms of their chronological age resulting in treatment usually associated with younger persons. Adolescent and adult clients are often taught such age-inappropriate behaviors as singing "the alphabet" song, playing "London Bridge is Falling Down", or putting together puzzles of "Big Bird" and "Mickey Mouse". Examples of more age-appropriate behaviors might include singing the National Anthem, playing basketball, jogging, or hooking rugs.

6. Will the skill be taught in the actual environment in which the client will eventually be expected to perform it?

YES NO

COMMENT:

Many clients have a difficult time generalizing from one setting to another. When a skill is aquired in one setting, it may not occur in a different setting. For example, teaching a client to identify signs that say "WALK" and "WAIT" on basic sight vocabulary cards and training them to walk and wait within the classroom may not transfer this skill to the actual "WALK" and "WAIT" signs at traffic intersections.

7. If the skill is a pre-requisite to learning some other skill, are you certain it is a pre-requisite that cannot be skipped?

YES NO

COMMENT:

Much time can be wasted teaching pre-requisite skills that are not actually pre-requisites. For example, many assessment instruments and curriculum guides addressing training in menstrual hygiene include first learning about the menstrual cycle, fertilization, identification of involved body parts, etc. as pre-requisites to learning about changing menstrual pads or tampons. Yet, it is quite possible to teach a client to care for herself during her menstrual cycle before she understands any of the physiological processes involved.

IMPLEMENTING THE HABILITATION PLAN

SHORT-TERM OBJECTIVES

Once annual goals are developed it will be necessary to develop short-term objectives to assist the client in reaching his or her annual goals. Short-term objectives are measurable, written, intermediate steps leading toward the attainment of the annual goals identified on the Habilitation Plan. Components of short-term objectives are as follows:

a) Who is the learner?

b) What is the observable behavior to be learned?

c) Under what conditions will this behavior occur?

d) What are the criteria for success?

Some examples of short-term objectives leading toward annual goals are:

I. Annual Goal:

Given a sanitary napkin and belt, _____ will put them on correctly.

Short-Term Objective:

Given a choice of sanitary napkin, cotton and Kleenex and given the cue, "Show me the sanitary napkin", _____ will point to the sanitary napkin for five (5) consecutive sessions.

EXAMPLES OF ANNUAL GOALS AND SHORT-TERM OBJECTIVES

II. Annual Goal:

When presented with four types of birth control methods (the "pill", an IUD, a diaphragm and a condom) and asked, "Which is the most effective method?", _____ will identify (point to) the "pill" as the most effective method.

Short-Term Objective:

When presented with four types of birth control methods (pill, IUD, diaphragm, and condom), _____ will correctly identify (name) each one for eight (8) consecutive sessions.

III. Annual Goal:

When presented with four pictures of socially dangerous situations (e.g. attempted rape, assault, stealing and unwanted touching), _____ will state the correct procedure for handling each situation.

Short-Term Objective:

When presented with ten (10) pictures (two at a time) of people exhibiting an example of acceptable behavior (e.g., shaking hands, talking) and an example of unacceptable behavior (e.g., "making out" in front of others, inappropriate touching) and asked, "Which is the best way to act in public?", _____ will point to the appropriate pictures for three consecutive trials.

LESSON PLANS

The methods used for implementing short-term objectives are usually called lesson plans (or training program plans). The training program or lesson plan normally consists of two major components:

1) Instructions for the trainer, and

2) Steps or procedures describing exactly what the client (learner) should be doing.

Lesson plans are commonly used in skill aquisition programs, such as self care skills, daily living skills, basic academics, etc. Each lesson plan follows a clear developmental or logical sequence of steps for each skill. In Human Growth and Development the procedure is more complex. Most trainers do not have immediate access to all the facts regarding particular steps on the Matrix (e.g., "physiological changes which occur with age"- Level VI, Physiological Identity, Step 1), therefore it will be necessary to identify factual information prior to developing the lesson plan. A sample Human Growth and Development lesson plan can be found in Appendix A.

Being Human: A Resource Guide in Human Growth and Development, is a companion piece to this handbook which identifies resources associated with each step of the Human Growth and Development Matrix (See Matrix Insert). The references found in the Resource Guide will assist the trainer in determining the correct or factual information to be included in the client's lesson plan.

METHODS FOR TEACHING HUMAN GROWTH AND DEVELOPMENT SKILLS

Teaching developmentally disabled people requires sensitivity and awareness on the part of the trainer. This is especially true in the area of Human Growth and Development.

This section discusses several methods used to teach Human Growth and Development skills. No matter which method is used, it is important for the trainer to remember that developmentally disabled clients have difficulty generalizing from one situation to another. Thus, instruction must be specific and concrete, duplicating as nearly as possible the real situations that clients will encounter.

Most clients naturally copy other people's behavior. This tendency to model others can be used to great advantage in teaching Human Growth and Development skills. Trainers must, therefore, consistantly exhibit the behavior they wish clients to imitate. Often, teaching a client to say "please" and "thank you" through example is easier than implementing a program that requires the trainer to prompt the client to use those words. Clients also imitate the speech patterns they hear. Many clients inadvertantly learn from their trainers to talk "baby talk" and to speak in sentences of only two or three words. Trainers should address clients as they wish the clients to speak.

Trainers should be aware of the slang words that clients may hear and use for body parts and functions. Clients should be taught when and where to avoid using slang words. Again, the trainer's own use of language can greatly influence the client's verbal behavior.

Clients who are taught to give and receive hugs and kisses as children may fail to appropriately change this behavior as they grow older. Adolescent or adult clients who allow others to touch them in inappropriate ways may inadvertantly invite sexual exploitation. Clients who touch others inappropriately may be seen as displaying sexually aggressive behavior. It is important that trainers model age-appropriate social interactions with their clients. Trainers must use caution in touching adolescent or adult clients. Such clients must be touched exactly as the trainer wants them to touch others in the community.

Role playing is another effective method to use in teaching Human Growth and Development skills. However, many clients do not immediately understand the abstract concept of "pretending." Trainers should prepare clients for role playing exercises by using familiar situations and stories. Clients practice playing different roles in these situations or stories until they begin to understand the idea of pretending to be someone else.

Once the client has learned to play a given role, he or she may be ready to successfully participate in social role playing situations. Trainers should strive to make role playing situations as realistic as possible. Such simulations allow clients to experiment with appropriate social behavior in a safe environment Ultimately, clients should have the opportunity to

practice learned skills in real social settings.

Trainers should be careful not to "over-teach" a particular area of the Human Growth and Development curriculum. Using the previous example of training a client through modeling, over use of the words "please" and "thank you" may make them seem meaningless to the client. Some trainers present information that does not aid a client in mastering a specific skill. A client who needs instruction in the use of tampons or sanitary napkins during her menstrual period does not need to know (and may never understand) the physiological processes involved in menstruation.

Trainers should avoid simply lecturing clients on Human Growth and Development topics. Often clients who appear attentive during a lecture session do not really understand what the trainer is saying. Role playing exercises, followed by group discussion, can be a much more effective approach.

While many Human Growth and Development topics can be discussed in sessions where both males and females attend, some subjects are best handled in seperate groups. Clients should be consulted to determine if they would prefer not to discuss certain subjects when members of the opposite sex are present.

Sometimes it is helpful to have two trainers in a Human Growth and Development training session. One trainer can moderate the session while the other models group participation by asking questions. Clients may then begin to ask additional questions on their own.

Information discussed in any group session is confidential.

Clients need to be reminded at each session that they are not to repeat anything discussed in the group with anyone outside the group. Clients are much more likely to participate openly when they know that their discussions are handled in a private and confidential manner.

The most important preparation for teaching in the Human Growth and Development area is for the trainer to be aware of his or her own attitudes, values, and feelings about what is proper behavior in the areas of social interaction, sexuality, health and hygiene. It is <u>not</u> the job of the trainer to teach his or her own personal values to the clients. Training should provide clients with the skills and information they need to make good, independent decisions about their own lives and their interactions with others.

CHAPTER TWO

POLICIES AND SUPPORT SYSTEMS

To ensure that every individual is afforded the same opportunities and rights, society has established guidelines (laws) which lay the foundation for how people should interact with each other. The State of Florida has enacted specific laws which protect and secure the rights of its developmentally disabled citizens and detail the responsibilites of staff employed by the state or vendor agencies to serve clients of HRS. These laws have direct bearing on the formation of policies and procedures regarding Human Growth and Development in state and vendor operated facilities and programs. Chapter III of this Handbook, "Legal Foundation of a Human Growth and Development Program", addresses some of the relevant state statutes and legal definitions.

In order to meet their legal responsibilities, agencies and programs which serve the developmentally disabled must translate the letter and spirit of relevant laws into action. The mechanism for doing so is through the use of a Policies and Procedures manual. An agency's manual must include policies and procedures that are in concert with the state's Human Growth and Development Policy Statement, which is quoted in its entirety as follows:

DEVELOPMENTAL SERVICES
HUMAN GROWTH AND DEVELOPMENT POLICY STATEMENT

Introduction

The Department of Health and Rehabilitative Services acknowledges the need for effective training in Human Growth and Development for all Developmentally disabled persons. In keeping with the philosophy of the Department, the Developmental Services Program Office proposes the following policy be adhered to by HRS districts, Sunland Centers and vendor agencies.

To complement this policy, the Program Office recommends that at the district level, a definitive set of interpretive guidelines be developed for approval by district level staff and Program Office staff. District interpretive guidelines for the Human Growth and Development policy will correspond with contemporary community standards and will meet the needs of the client population.

Human Growth and Development is a lifelong process which begins, develops and alters with biological maturation and environmental influences. This process refers to a person's realization of sexuality and sexual differences and is expressed in various attitudes, values, behavior and knowledge.

Every Developmental Services client has the right to recieve education and training according to his/her individual needs.* Knowledge of the Human Growth and Development process and cultivation of socially and sexually acceptable behaviors shall be an integral part of this training. Each client's need for Human Growth and Development education shall be determined through the client's formal assessment and expressed as goals in his/her Habilitation Plan and Prescriptive Program. All goals shall be appropriate to the client's level of functioning as determined by the assessment in this area. Consent to the Habilitation Plan thus authorizes consent to implementation of all goals thereupon.

To ensure programming to meet these identified goals, staff and parents shall be provided with the necessary information, training and resources. Topics for training and content specialists shall be identified in a staff development plan developed for each district. Additionally, staff and primary caretakers, who are responsible for the implementation of Human Growth and Development goals shall be provided with the materials essential to instruction.

* Section 393.13, Florida Statutes
"The Bill of Rights of Retarded Persons"

Policy Statement

1. Developmental Services clients shall be provided factual information relevant to their human growth and development according to individual needs.

2. The goals for Human Growth and Development Education shall include but not be limited to the following:

A. To provide individuals with information about own physical, mental and emotional maturation process.

B. To enable individuals to recognize, cope with, and/or eliminate fears and anxieties relative to individual sexual development.

C. To provide individuals with information concerning their relationship to members of both sexes and to help them understand their obligations and responsibilities to themselves and others.

D. To build an understanding of the need for personal values which are consistent with contemporary community standards and provide a rational basis for making decisions.

E. To provide information concerning sexual behavior which enables individuals to protect themselves against exploitation and injury to their physical and/or mental health.

F. To provide parents and staff with information which will enable them to assist clients in attaining sexual fulfillment in a socially and morally acceptable manner.

G. To teach developmentally disabled persons that sexual expression is a normal and healthy part of being human.

H. To provide appropriate information concern ing methods of birth control, procedures for choosing and obtaining, and the advantages and disadvantages of each method.

I. To provide information regarding the cause, symptoms, and the necessity for treatment of the various types of venereal disease.

J. To provide information about legal issues and societal mores concerning sexual behaviors.

K.To provide instruction in the use of appropriate terminology in various social situations.

3. Social situations that foster the learning of appropriate social interaction skills between individuals of the same or opposite sex shall be made available to, but not imposed upon, any client. Instruction appropriate for the developmental and sexual level of the client shall be made available and may precede independent dating.

4. Expressions of affection (e.g., kissing, holding hands, hugging, touching, etc.) which are acceptable by contemporary community standards shall be considered appropriate for developmentally disabled persons when both parties have a social understanding of such interactions and when these interactions occur at an appropriate time and setting.

5. Concerning sexual relations between unmarried persons and persons of the same sex, clients' rights, responsibilities and protections afforded by law shall be considered. Staff shall instruct clients on the law and consequences of such behaviors and encourage independent decision making regarding acceptable behavior.

6. Masturbation, when it occurs at an appropriate time and in a private setting, shall be considered an acceptable and natural expression of sexual behavior. Under these circumstances, staff shall not interfere with clients engaging in this behavior or treat them in a punitive manner. Clients who masturbate at an inapproriate time and/or without regard to privacy shall be trained to make correct decisions regarding conditions of privacy and acceptable behavior. Clients who continue to exhibit public masturbation, are excessively sexually forward, or expose themselves constantly, shall be considered for the following: medical examination, environmental manipulation, counseling (by staff, vendors or other qualified persons) and/or behavioral programming in accordance with the Florida Developmental Services Behavior Management Guidelines (now known as HRSM 160-4, Developmental Services Behavioral Programming and Management Manual).

7. Adult clients shall have access to literature, media and materials of their choice which have been defined as legally acceptable by the community in which they reside. No one shall impede the right of the adult clients to privately own or view such material, if

exercising this right does not compromise the rights of others.

8. Counseling and training shall be provided to clients considering cohabitation and clients who wish to marry, prior to and following the marriage. This will include, but shall not be limited to:

A. Information about responsibilities, advantages and disadvantages of being single.

B. Information about responsibilites, advantages and disadvantages of marriage.

C. Information about the legal responsibilities/consequences of entering into a marriage.

D. Information about the financial and emotional responsibilities involved in marriage.

E. Information regarding the legal ramifications of cohabitation.

F. Services for family planning/contraception, and genetic counseling.

G. Alternative placements for a child.

H. Responsibilities involved in rearing children.

I. Options to pregnancy.

Both the rights and needs of the unborn child and the rights of developmentally disabled persons to bear children shall be considered in the counseling situation.

-Human Growth and Development Policy Statement,
Developmental Services Program Office,
January, 1981

POLICIES AND PROCEDURES

Using the above state policy statement as a guideline, each agency or program should develop its own policies and procedures relative to Human Growth and Development. Doing so will assist the agency : 1) to establish the framework for training clients in decision-making and, 2) to provide staff with the administrative support they need to deal with specific client actions.

The policy statement should include the agency's position regarding a particular issue. The procedure should provide the mechanism for implementing the policy statement. The sample agency policy (with procedures for policy implementation), found on the next page, was developed using the state guideline on masturbation cited above in Paragraph #6 of the Developmental Services Human Growth and Development Policy Statement:

SAMPLE AGENCY POLICY STATEMENT

POLICY:

SUBJECT: MASTURBATION

AUTHORITY
REFERENCE: DEVELOPMENTAL SERVICES, HUMAN GROWTH AND DEVELOPMENT POLICY STATEMENT, PARAGRAPH 6.

Masturbation, when it occurs at an appropriate time and in a private setting, shall be considered an acceptable and natural expression of sexual behavior. Under these circumstances, staff shall not interfere with a client engaging in this behavior or treat him (her) in a punitive manner. A client who masturbates at an inappropriate time and/or without regard for privacy shall be trained to make correct decisions regarding conditions of privacy and acceptable behavior. A client who continues to exhibit public masturbation, is excessively sexually forward, or exposes himself (herself) constantly, shall be considered for the following: medical examination, environmental manipulation, counseling (by staff, vendors or other qualified persons) and/or behavioral programming in accordance with the Developmental Services Behavioral Programming and Management Manual (HRSM 160-4).

PROCEDURES:

1. Areas within the facility which shall be defined as "private areas" are the client bedrooms and the client bathrooms. (See sample policy on privacy, below. The agency's manual should cross-reference a policy on privacy within its policy on masturbation.)

2. Staff observing discrete masturbatory behavior in these private areas should:

   a. Excuse themselves if they have failed to knock or announce themselves and quickly exit the area,

   b. Quickly exit the area if the client has not seen them.

3. Staff should not react to private masturbation with anger, ridicule, or punishment, nor should staff gossip with others about the client or his (her) behavior. (Appropriate discussions about client behavior should be held during inter-disciplinary team meetings). Violation of this procedure may result in a reprimand.

4. Staff who observe clients engaged in public

masturbation shall:

a. Quickly and quietly escort the client to a "private area", explaining to the client that he or she is not to touch his or her genitals in the company of others.

b. Once they are in the "private area", the staff member should explain to the client (in language the client can understand) that if he or she wants to touch his or her genitals to do so when alone and in a private area.

c. A notation of the incident should be placed in the client's unit file. This will allow staff to determine the frequency of the client's public masturbation.

d. If further investigation determines that public and/or private masturbation has become excessive (i.e. interferes with daily activities and programs), the problem should be referred to the client's inter-disciplinary team (IDT). Note: Top priority should be given to a complete medical examination to rule out any organic causes for the action.

e. The IDT, based on its professional judgement, after having given consideration to environmental manipulation, counseling, therapy and behavioral and medical intervention, should decide on a consistent method of treatment.

f. All staff involved with the client are to be trained in methods of intervention.

g. A designated member of the team report client progress to the IDT at least monthly.

5. A client who demonstrates sexually forward behaviors and/or public exposure shall be immediately dealt with as in #4a above. Immediate intervention by the IDT is necessary for these behaviors and shall be dealt with as in #4e, #4f, and #4g above.

6. Lack of progress in the applied method of treatment over an extended period of time may result in consideration of alternative placement for the client. The (name of example agency) will document and insure that everything possible to treat the needs of individual clients has been attempted prior to considering alternative placement.

-End of Sample Agency Policy Statement-

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The following list suggests some of the other areas that may require written policies:

abortion
children
contraception
dating
expression of affection
genetic counseling
heterosexual behavior
homosexual behavior
human growth and development program
illegal use of drugs
literature
marriage (ICF/MR requirement)
privacy
profane language
religious activities
social activities
stealing
use of alcohol
venereal disease

For example, an agency policy and accompanying procedures on privacy might include issues outlined in the following sample:

SAMPLE AGENCY POLICY STATEMENT ON PRIVACY

==========

SUBJECT: PRIVACY

AUTHORTIY REFERENCE: CHAPTER 393.13 (3)(a), FLORIDA STATUTES

PROCEDURES:

1. Recognizing that privacy may not be easily attainable given the sheer number of staff and clients, it is therefore necessary to define as "private areas" client bedrooms and client bathrooms.

2. Prior to entering any of the above private areas, all persons will knock or announce themselves and wait for permission to enter.

3. If permission is not granted, give your reason or need to enter and state that you will be back to enter in a few minutes.

4. Parents, visitors, staff and clients will adhere to the above policy.

5. In the event of an emergency (which should be defined in an agency's policy and procedures on emergencies), the above procedures should be disregarded. Client safety is the primary concern and persons having a need to enter any room in order to protect the health and welfare of clients should do so.

-End of Sample Agency Policy Statement-

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SUPPORT SYSTEMS

Discretion should be used in deciding which topics should be included in the agency's Policy and Procedures Manual. Other support systems can be used to develop rules of conduct in sensitive areas.

"House Rules" are an example of a support system. House rules should clearly define the limits of acceptable client behavior. They should be written in a manner that is understandable to the clients. Clients should participate in the rule making process. When clients are involved in the development of house rules they often monitor each other to assure compliance with accepted facility conduct.

A good set of house rules will outline the limits on client behavior. For example, enforcing a curfew (clients in their own bedrooms at a specific hour) will minimize the incidence of serious breaches of conduct.

The development of these rules will assist in resolving such issues as curfews, visitations, smoking, expressions of affection, snacks, reading materials, use of alcholic beverages, drugs, fighting, use of televisions and stereos, etc.

Another support system is the use of "Employee Rules of Conduct." Just as clients need to understand their limits, so do the staff. Employees need to know facility policies and procedures in areas relevant to their jobs, with special emphasis on the area of client rights. Usually this information is included in the agency's employee orientation packet. The staff must acknowledge and document that they have received, understand

and agree to follow such rules. Areas to consider are:

Absenteeism
Accepting gifts
Client abuse
Client rights
Dress codes
Fund raising or soliciting
Possession of weapons
Public relations
Religious activities
Sleeping on the job
Stealing
Tardiness
Use of alcoholic beverages
Use of drugs
Use of television when clients are not present

Development of a comprehensive set of policies, procedures, and related support systems will give clear guidelines for conduct to both the staff and the clients. This will foster smoother daily operations, better staff morale, and a consistent environment for the clients.

CHAPTER THREE

LEGAL FOUNDATION OF A HUMAN GROWTH AND DEVELOPMENT PROGRAM

Given the individual needs of clients and the varying levels of service offered by public and private providers, there can be no "blanket statement" covering all issues related to client rights and staff responsibilities in the area of Human Growth and Development. No clear-cut definitive answers exist for the many issues relevant to client rights. Good faith and professional judgement, combined with knowledge and understanding of applicable laws, regulations and guidelines, allow a balance between staff responsibilities and clients rights.

Florida law establishes the responsibility of professionals in the field of developmental disabilities to provide training in the area of Human Growth and Developement:

> "Each client shall recieve education and training services regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps. Clients may be provided with instruction in sex education, marriage, and family planning as prescibed in the client's individual habilitative program."
>
> -Chapter 393.13 (3) (e), Florida Statutes

Professionals must be aware of other relevant Florida laws prior to initiating client training in the Human Growth and Development skill area. Copies of the following Florida statutes are found in Appendix B:

Chapter 381.382	- Family Planning
Chapter 794	- Sexual Battery
Chapter 796	- Prostitution
Chapter 797	- Abortion
Chapter 798.01	- Living in Open Adultery
Chapter 798.02	- Lewd and Lascivious Behavior
Chapter 800.02	- Unnatural and Lascivious Acts
Chapter 800.03	- Exposure of Sexual Organs
Chapter 800.04	- Lewd, Lascivious or Indecent Assault or Act Upon or in the Presence of Child
Chapter 847	- Obscene Literature, Profanity

While some of these statutes are discussed in this chapter, it is important that professionals read and understand all relevant statutes.

CLIENT RIGHTS

State law is very clear on the issue of client rights. The Bill of Rights of Retarded Persons states that:

> "The mentally retarded person shall have all the rights enjoyed by citizens of the state and the United States."
>
> -Chapter 393.13 (2) (d) 1., Florida Statutes

Interpretation of the rights of developmentally disabled persons has always been difficult. The concept of client rights is especially complicated when applied to the area of Human Growth and Development. Staff who work with clients on a daily basis have many questions, such as:

> "Do clients or their parents have the right to refuse training in the area of Human Growth and Development?"

"What should the staff do if a client exhibits sexual behavior in public?"

"Are clients allowed to masturbate?"

These and other related questions are increasingly important as clients move out of large state institutions and into the community.

COMPETENCY

A crucial issue in understanding client rights is the concept of competency. The question of an individual client's competency cannot be answered without a clear definition of the term. The common definition of "competent" is being able or qualified. At some level of sophistication we all become incompetent. Few of us are competent to conduct brain surgery or operate nuclear power plants. By this definition, a client may be competent in one setting and quite incompetent in another.

More relevant here is the legal definition. In law, if an adult is totally without capacity to care for himself or herself or his or her estate, a court may be petitioned to adjudicate that person incompetent and appoint a "guardian" to make substitute decisions for that individual.

All adult client are considered legally competent unless they have been adjudicated incompetent by the court:

> "No person shall be presumed incompetent solely by reason of his acceptance in nonresidential services or admission to residential care; nor shall any such person be denied the full exercise of all legal rights guaranteed to citizens of this state and of the United States."
>
> -Chapter 393.12 (1), Florida Statutes

Unless there is a court order stating that a person has been adjudicated incompetent, all persons, developmentally disabled or not, eighteen years of age or older are legally considered to be competent adults.

Legal discussions often use the terms de facto and de jure relating to a person's competence. De jure competence means that the person is legally competent, i.e., he or she has not been adjudicated incompetent by a court. De facto competence means that the person is factually capable of making decisions for himself or herself. The two terms are independent of each other. For example, person may be de facto (in fact) competent and de jure (legally) incompetent (i.e., he or she is capable of making decisions, but a court has adjudicated the person incompetent). In this case, legal proceedings to restore competency are in order. Or, a person may be de facto (in fact) incompetent and de jure (legally) competent (i.e., although not adjudicated incompetent, the person is incapable of making decisions). Such a situation leaves professionals who work with the person in a "gray area." On one hand, they may have a professional or legal duty to provide services, while on the other hand, services should only be provided with the consent of either the person being served or that person's legal representative.

State law recognizes the fact that a retarded person may need protection for his or her property or person without an adjudication of incompetency. In such cases, the law (Chapter 393.12, Florida Statutes) allows the appointment of a "guardian. advocate" to substitute consent in only those areas in which the retarded person requires assistance or protection (e.g., real

estate transfers, medical decisions, etc.).

If a case arises where the staff feels that legal proceedings regarding a determination of competency or the appointment of a guardian advocate should be initiated, guidance will be provided by the Developmental Services Program and the HRS legal counsel in the district where the client resides.

CONSENT

Another important issue regarding client rights is the concept of "consent". In the Developmental Services Program the term "consent" usually refers to a category on each client's Habilitation Plan entitled "informed consent":

> "The client's ability to give informed consent . . .is based on client characteristics and characteristics of the proposed services. In the majority of cases the outcome will rest on whether the client understands the most restrictive goal on the habilitation plan."
>
> -HRS Manual No. 160-2, paragraph (4-6) d., Developmental Services Client Services Manual, March 1,1982

Unlike competency, the ability of an individual to give informed consent is a matter of professional judgement and is not considered a legal term in Florida. A signature by the client and/or his or her guardian or guardian advocate is an indication that the individual agrees to accept such services. (Note: If a client has been adjudicated incompetent, however, he or she cannot give written consent.)

CLIENT CHARACTERISTICS

Client Characteristics to be considered in determining the client's ability to give informed consent:

1. Age of client-minors are considered to be incompetent by law,

2. Mental capacity of client-the client's ability to understand,

3. Degree of understanding or information the client has about the service being offered-how much information has been disclosed and how clearly has it been disclosed?

4. Degree to which the client voluntarily accepts the service versus the degree to which the system is pressuring the client to accept the service-how restrictive is the environment?

SERVICE CHARACTERISTICS

Service Characteristics to be considered in determining the client's ability to give informed consent:

1. Degree of risk to the client. For example, surgery is considered to be high risk. Further guidance is provided by the American Association on Mental Deficiency (AAMD) Consent Handbook:

   A. If the service involves little risk, little intrusiveness and little permanence then an adult client with little capacity and little knowledge may consent.

   B. If the risks are moderate, it is often appropriate to ask that both the client and next-of-kin sign, even if the client is an adult. The consent of the next-of-kin of an adult client is obtained not because their consent is legally substituted for the client's, but because (when there is no guardian) the next of kin is a.) an independent decision maker, who b.) should have the client's interest at heart, and c.) is (in reality) the person most likely to complain or sue if the client is injured and consent is inadequate.

   C. If the service involves high risk, loss of freedom, or is irreversible, an appropriate court procedure must be employed for adult clients.

2. Degree to which the service intrudes unpleasantly on the person's liberty or life style. For example, institutionalization is considered to be highly

intrusive.

3. Degree to which services are irreversible.

WHEN INFORMED CONSENT CANNOT BE GIVEN

If it is determined, through the diagnosis and evaluation process, that an adult applicant for services cannot give informed consent the D&E (diagnosis and evaluation) evaluator should recommend to the Habilitation Planning Committee that:

1. When the applicant for services will remain in his or her own home, the individual serving as the responsible party should co-sign document with the applicant.

2. If residential care is probable, involuntary admission should be identified as a goal on the habilitation plan to be implemented concurrently with placement.

3. When it appears that the client is in need of an advocate and this is a goal which can be accomplished in the habilitation plan period (one to three years), a goal in the Informed Consent section (Section D) of the habilitation plan is appropriate. If it is unlikely that obtaining an advocate can be accomplished within this time frame, the goal is appropriately placed in the Long Range Optimal Plan section of the habilitation plan (Section B).

-HRS Manual 160-2, paragraph (4-6) d. (4),
Developmental Services Client Services Manual,
March 1, 1983

SPECIAL SITUATIONS

A balance must be maintained between the right of the client to recieve those services which he or she needs and his or her right to be left alone, and not forced into situations involuntarily. The balance is largely dependent on two factors:

1. Urgency: In cases where death or permanent disability may result, involved medical procedures may be completed without the patient's consent.

2. Custom: Professional discretion will be much broader when routine services are delivered in a routine manner than when extraordinary or novel procedures not normally within the scope of the profession are used.

PARENT'S OR GUARDIAN'S CONSENT

While a balanced Human Growth and Development curriculum is much broader than simple "sex education", some of the content is of a sensitive nature. To protect themselves and their agencies, trainers often seek permission to conduct a Human Growth and Development program from parents or guardians of clients who have not reached legal age or who are incompetent. Obtaining such a "sign-off" is unnecessary and calls undue attention to the training.

The annual Habilitation Plan authorizes the services which a specific client receives. Parents or guardians sign the Habilitation Plan to acknowledge that they understand and consent to the services that will be provided to their child or ward during the coming year. Deficits in the Human Growth and Development skill area should be addressed on the client's Habilitation Plan. Additional requests for permission to conduct a Human Growth and Development program are superfluous.

SOME QUESTIONS AND ANSWERS

The following questions have been asked by professionals in the field. Brief answers are provided, however reference should be made to the Developmental Services Human Growth and Development Policy Statement and to the relevent Florida statutes.

1. QUESTION:
   What impact does state law have on clients attending programs funded by the state?

   ANSWER:
   Programs funded in any way by state dollars cannot condone any activity which is in violation of Florida statutes.

2. QUESTION:
   Does this mean that legally competent male and female clients cannot willfully engage in intercourse in the privacy of one of their bedrooms in a group home?

   ANSWER:
   "If any man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior, they shall be guilty of a misdemeanor of the second degree . . ." Chapter 798.02, Florida Statutes) Given a strict interpretation of this law, the group home cannot condone such activity, however, neither can the home deprive a client of all right to privacy. A good mechanism for dealing with such issues is the developement of agency policies and procedures and "house rules" relative to this area. Chapter Two of this handbook, "Policies and Support Systems", addresses this issue in detail.

3. QUESTION:
   Since the possiblity of pregnancy exists, can we require that all female clients take or practice some form of birth control?

   ANSWER:
   Yes, but if the agency chooses to include mandatory birth control as part of their admission criteria, it must be documented and explained to clients prior to admission. Note: The agency must ensure that the use of a particular contraceptive method or device is not medically contraindicated.

Birth control is normally a medical issue and should be dealt with as such. Factors to consider are:

a. The client's current sexual activity.

b. The client's age.

c. The client's history of related surgery, i.e., sterilization, hysterectomy, etc.

d. The client's competency status.

e. The client's ability to give informed consent.

f. The authorization for birth control on the client's habilitation plan.

g. The existence of a medical condition that would be aggravated by the use of a particular type of birth control.

h. The awareness and support of the client's parent or guardian.

i. The use or advisement of the least intrusive method possible, considering especially any skills or competence which the client is liable to gain in the foreseeable future.

4. QUESTION:
I didn't see homosexuality specifically identified in the law. Does that mean it is not against the law?

ANSWER:
No. Homosexuality is found in Chapter 800, F.S, referring to crimes against nature, and is considered an unnatural and lascivious act. Within the law, homosexual acts are treated in the same manner as heterosexual acts between unmarried persons.

5. QUESTION:
How do we deal with clients who show a preference for homosexual activity?

ANSWER:
For those persons capable of understanding, staff shall provide those clients with instruction regarding the law and consequences of such behaviors and encourage independent decision making regarding acceptable behavior.

6. QUESTION:
Can't I just ignore all this if it makes me uncomfortable?

ANSWER:
If you personally do not feel comfortable, do not discuss sensitive matters with the client. Those "uncomfortable" feelings may be transmitted to the client, creating confusion. It is necessary that you contact the person on your facility's staff (e.g., a social worker) who is able to discuss these issues comfortably.

7. QUESTION:
Can agencies allow clients to masturbate?

ANSWER:
This question is answered by the Developmental Services Human Growth and Development Policy Statement on masturbation:

> "Masturbation, when it occurs at an appropriate time and in a private setting, shall be considered an acceptable and natural expression of sexual behavior. Under these circumstances, staff shall not interfere with clients engaging in this behavior or treat them in a punitive manner."

8. QUESTION:
What are the agency's options when an incompetent client exhibits inappropriate or aggressive sexual behavior towards others and the parent or guardian refuses to consent to behavioral programs designed to reduce the inappropriate behavior?

ANSWER:
The parent or guardian should be consulted about the client's need for training. They should be told that lack of training could result in serious consequences such as criminal charges. If the parent or guardian is adamant in his or her refusal, the agency's options become very limited and the client will probably need to be placed in a more restrictive environment. The agency must document such problems and possible alternative placements on the client's Habilitation Plan. The parent or guardian can then appeal the Habilitation Plan to the District Administrator through established procedures.

9. QUESTION:
What can be done about competent clients who refuse programming?

ANSWER:
Legally, the client does not have to accept services authorized on the habilitation plan. It is suggested that

staff strongly attempt to persuade the client to accept programming. If the client cannot be persuaded, an addendum to the habilitation plan should be made. If the lack of training in a particular area is a barrier to the achievement of the client's Long Range Optimal Plan or the client presents a danger or serious annoyance to other clients, the client's interdisciplinary team should discuss options and possible alternative placements.

10. QUESTION:
How should parents' objections to a competent client's participation in Human Growth and Development programming be handled?

ANSWER:
Legally, parents who are not also guardians do not have the right to prevent the adult client's participation. Practically speaking, this is not a feasible approach. Staff should make every attempt to explain to parents that the ultimate purpose of Human Growth and Development programming is to help the client successfully interact with his or her environment. Agencies do not have the authority to implement training in Human Growth and Development that is not identified on the client's Habilitation Plan. Regardless of the parents legal status with regard to their adult son or daughter, they should be encouraged to attend the Habilitation Planning Committee meeting to discuss client programming needs and attempt to resolve any disagreements. Their support and encouragement is important to the client and the agency.

11. QUESTION:
Are clients allowed to subscribe to magazines like Playboy, Playgirl or Penthouse and receive them in their residential facility?

ANSWER:
The answer is clearly addressed in the Developmental Services Human Growth and Development Policy Statement, Paragraph 7:

"Adult clients shall have access to literature, media and materials of their choice which have been defined as legally acceptable (through local laws) by the community in which they reside. No one shall impede the right of the adult clients to privately own or view such material, if exercising this right does not compromise the rights of others."

12. QUESTION:
How should we deal with adult clients exposing themselves to minors?

ANSWER:
Staff should immediately intervene in such situations, for this is considered a serious infraction in our society and can be harmful to the minor. The client may need to be transferred to a facility with more monitoring.

13. QUESTION:
What happens if you have a legally competent client engaging in fornication with a client who has been adjudicated incompetent?

ANSWER:
An incompetent client must be protected just like a child who cannot protect him or herself. The group home cannot condone such activity, however, neither can the home deprive a client of all right to privacy. A good mechanism for dealing with such issues is the development of agency policies and procedures and "house rules" relative to this area. Chapter Two of this handbook, "Policies and Support Systems", addresses this issue in detail.

Additionally, two questions must be addressed in this situation:

1) Were both clients consenting to the act?

2) Is it reasonable to assume that neither client was abused?

If the answer to both questions is "yes", then both clients should be dealt with in a therapeutic manner based on the agency's policies and procedures. Other techniques may include environmental manipulation or behavioral intervention techniques.

If the answer to <u>either</u> question is "no", all steps should be taken immediately to ensure that the situation does not recur, and the HRS Abuse Registry must be contacted.

APPENDIX A

SAMPLE
HUMAN GROWTH AND DEVELOPMENT
PREASSESSMENT INFORMAL INTERVIEW FORM

Client_____ Interviewer_____

Persons Interviewed	Relationship to client	Date
A._____	_____	_____
B._____	_____	_____
C._____	_____	_____

1. What behaviors, appearances, or characteristics does the client have that cause others to avoid/reject the client?
   A.
   B.
   C.
2. What skills do the primary caretakers consider most urgent for the client to learn?
   A.
   B.
   C.
3. Is someone at home or school doing something for the client that the client should be doing for himself/herself?

4. Which social skills are most urgently needed for the client's successful social functioning at home and in the community today?

5. What health/hygiene skills are most urgently needed for the client's independent functioning at home and in the community today?

6. What knowledge about physiology and development are most urgently needed for successful functioning at home and in the community today?

7. Where will the client be living in three to five years from today?

   a. What social skills will help the most to make the client independent and socially accepted within that environment?

   b. What health/hygiene skills will help the most to make the client independent and socially accepted within that environment?

   c. What knowledge about physiology (biological facts) and development will help the most to make the client independent and socially accepted within that environment?

From: Being Human: A Handbook in Human Growth & Development

DATE: _____ EVALUATOR: _____

CLIENT: _____

SAMPLE

EVALUATION FOR HUMAN GROWTH AND DEVELOPMENT GOALS

Goal: _____

_____

1. DOES THE CLIENT NEED THIS SKILL TO FUNCTION AS INDEPENDENTLY AS POSSIBLE AT HOME, IN THE COMMUNITY OR AT WORK? YES NO
2. WILL THE SKILL MAKE THE CLIENT APPEAR MORE NORMAL (LESS DEVIANT) AT HOME, IN THE COMMUNITY OR AT WORK? YES NO
3. IF THE CLIENT DOES NOT PERFORM THE SKILL, WILL SOMEONE ELSE HAVE TO ASSIST HIM/PERFORM IT FOR HIM? YES NO
4. DOES THE CLIENT, CLIENT'S FAMILY, GUARDIAN OR CARETAKER WANT THE CLIENT TO LEARN THE SKILL? YES NO
5. WOULD NON-HANDICAPPED PEOPLE OF THE SAME CHRONOLOGICAL AGE ENGAGE IN THAT BEHAVIOR? YES NO
6. WILL THE SKILL BE TAUGHT IN THE ACTUAL ENVIRONMENT IN WHICH THE CLIENT WILL EVENTUALLY HAVE TO PERFORM IT? YES NO
7. IF THE SKILL IS A PREREQUISITE TO LEARNING SOME OTHER SKILL, ARE YOU CERTAIN IT IS A PREREQUISITE THAT CANNOT POSSIBLY BE SKIPPED YES NO

IF MORE THAN ONE "NO" IS CIRCLED, THE GOAL SHOULD BE RE-WRITTEN, RECONSIDERED OR DISCARDED.

From: Being Human: A Handbook in Human Growth & Development

HUMAN GROWTH AND DEVELOPMENT

NAME: _____ INSTRUCTOR: _____

DOMAIN: _____ LEVEL: _____

SHORT TERM OBJECTIVES: _____ STEP: _____

_____

_____

RESOURCES USED: _____

_____

_____

_____

IMPORTANT FACTS/CONSIDERATIONS FROM RESOURCES: _____

_____

_____

_____

_____

MATERIALS NEEDED: _____

Steps for client/learner	Instructor Methodology or Training Procedure

EXAMPLE

HUMAN GROWTH AND DEVELOPMENT

NAME: Jane Doe

INSTRUCTOR: Linda Rolen

DOMAIN: Health and Hygiene

LEVEL: III

SHORT TERM OBJECTIVES: Given a sanitary napkin and belt _____ will put it on correctly for four trials a day for three consecutive days.

STEP: 4 (Recognizes the aspects of menstruation)

RESOURCES USED: (Reference pages 128 & 129 - Being Human: A Resource Guide in Human Growth & Development)

1) Project More: Personal Care Series, J. R. Lent "Using sanitary napkins"

2) Teaching Good Behavior and Personal Hygiene to the Retarded Adolescent, M. M. Thompson, Ph.D., "Guidebook for Girls"

IMPORTANT FACTS/CONSIDERATIONS FROM RESOURCES:

1) Training should occur during the client's menstrual period.

2) Make sure sanitary napkins do not have adhesive strip on back, since a belt is being used.

3) Napkins may be left on for several hours, but should be changed at regular intervals.

4) Contact residence to determine if belt and napkins are being used there.

MATERIALS NEEDED: Belt. Sanitary napkins.

Steps for client/learner	Instructor Methodology Activity
1. _____ sits on toilet and removes pants/panties.	1. At the onset of her period explain that you are going to show her how to put on a sanitary napkin and belt.
2. _____ assists in putting belt smoothly around her waist.	2. Instruct her to remove her panties. Using both hands assist _____ in pulling the belt up around her waist (such as with underwear).
3. _____ fits napkin into belt.	3. Demonstrate how to fit the napkin into the belt. Allow client to do this on her own.
4. _____ replaces panties to accommodate napkin.	4. Cue her to put panties on without disturbing the napkin.

APPENDIX B:

Chapter 381.382	- Family Planning
Chapter 794	- Sexual Battery
Chapter 796	- Prostitution
Chapter 797	- Abortion
Chapter 798.01	- Living in Open Adultery
Chapter 798.02	- Lewd and Lascivious Behavior
Chapter 800.02	- Unnatural and Lascivious Acts
Chapter 800.03	- Exposure of Sexual Organs
Chapter 800.04	- Lewd, Lascivious or Indecent Assault or Act Upon or in the Presence of Child
Chapter 847	- Obscene Literature, Profanity

381.382 Family planning.--

(1) SHORT TITLE.--This section shall be known as the "Comprehensive Family Planning Act."

(2) LEGISLATIVE INTENT.--It is the intent of the Legislature to make available to citizens of the state of childbearing age comprehensive medical knowledge, assistance, and services relating to the planning of families and maternal health care.

(3) ACCESS TO SERVICES; PROHIBITIONS.--Except as otherwise provided in this section, no medical agency or institution of this state or unit of local government shall interfere with the right of any patient or physician to use medically acceptable contraceptive procedures, supplies, or information or to restrict the physician-patient relationship.

(4) AUTHORITY AND POWERS.--

(a) The Department of Health and Rehabilitative Services shall implement a comprehensive family planning program which shall be designed to include, but not be limited to, the following:

1. Comprehensive family planning education and counseling programs.

2. Prescription for and provision of all medically recognized methods of contraception.

3. Medical evaluation, including cytological examination and other appropriate laboratory studies.

4. Treatment of physical complications other than pregnancy resulting from the use of contraceptive methods.

5. Provision of services at locations and times readily available to the population served.

6. Emphasis and stress on service to post partum mothers.

(b) Services shall be available to all persons desirous of such services, subject to the provisions of this section, at a cost based on a fee schedule prepared and published by the Department of Health and Rehabilitative Services. Fees shall be based on the cost of service and ability to pay.

(5) MINORS; PROVISION OF MATERNAL HEALTH AND CONTRACEPTIVE INFORMATION AND SERVICES.--

(a) Maternal health and contraceptive information and services of a nonsurgical nature may be rendered to any minor by persons licensed to practice medicine under the provisions of chapter 458 or chapter 459, as well as by the Department of Health and Rehabilitative Services through its family planning program, provided the minor:

1. Is married;

2. Is a parent;

3. Is pregnant;

4. Has the consent of a parent or legal guardian; or

5. May, in the opinion of the physician, suffer probable health hazards if such services are not provided.

(b) Application of nonpermanent internal contraceptive devices shall not be deemed a surgical procedure.

(6) REFUSAL FOR RELIGIOUS OR MEDICAL REASONS.--The provisions of this section shall not be interpreted so as to prevent a physician or other person from refusing to furnish any contraceptive or family planning service, supplies, or information for medical or religious reasons; and the physician or other person shall not be held liable for such refusal.

History.--ss. 1-6, ch. 72-132.

794.011 Sexual battery.--

(1) Definitions:

(a) The term "consent" means intelligent, knowing, and voluntary consent and shall not be construed to include coerced submission.

(b) The term "mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

(c) The term "mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered to that person without his or her consent or due to any other act committed upon that person without his or her consent.

(d) The term "offender" means a person accused of a sexual offense.

(e) The term "physically helpless" means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(f) The term "retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(g) The term "serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

(h) The term "sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(i) The term "victim" means the person alleging to have been the object of a sexual offense.

(2) A person 18 years of age or older who commits sexual battery upon, or injures the sexual organs of, a person less than 12 years of age in an attempt to commit sexual battery upon such person commits a capital felony, punishable as provided in ss. 775.082 and 921.141. If the offender is under the age of 18, that person is guilty of a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury is guilty of a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, under any of the following circumstances is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) When the victim is physically helpless to resist.

(b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.

(c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.

(d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.

(e) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.

(5) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in

the process thereof uses physical force and violence not likely to cause serious personal injury is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Evidence of the victim's mental incapacity or defect is admissible to prove that the consent was not intelligent, knowing, or voluntary; and the court shall instruct the jury accordingly.

History.--s. 2, ch. 74-121; s. 17, ch. 75-298; s. 1, ch. 84-86.

cf.--s. 775.15 Time limitations for commencing prosecutions.

s. 787.01 Kidnapping.

s. 787.02 False imprisonment.

s. 903.133 Bail on appeal; prohibited for certain first-degree felony convictions.

s. 914.16 Child abuse and sexual abuse victims under age 16; limits on interviews.

s. 944.033 Community correctional centers; restriction.

794.02 Common-law presumption relating to age abolished.--The common-law rule "that a boy under 14 years of age is conclusively presumed to be incapable of committing the crime of rape" shall not be in force in this state.

History.--s. 1, ch. 4964, 1901; GS 3222; RGS 5052; CGL 7154; s. 2, ch. 74-121.

794.021 Ignorance or belief as to victim's age no defense.--When, in this chapter, the criminality of conduct depends upon the victim's being below a certain specified age, ignorance of the age is no defense. Neither shall misrepresentation of age by such person nor a bona fide belief that such person is over the specified age be a defense.

History.--s. 2, ch. 74-121.

794.022 Rules of evidence.--

(1) The testimony of the victim need not be corroborated in a prosecution under s. 794.011.

(2) Specific instances of prior consensual sexual activity between the victim and any person other than the offender shall not be admitted into evidence in a prosecution under s. 794.011. However, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence may prove that the defendant was not the source of the semen, pregnancy, injury, or disease; or, when consent by the victim is at issue, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of the victim which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

(3) Notwithstanding any other provision of law, reputation evidence relating to a victim's prior sexual conduct shall not be admitted into evidence in a prosecution under s. 794.011.

History.--s. 2, ch. 74-121; s. 237, ch. 77-104; s. 1, ch. 83-258.

794.023 Sexual battery by multiple perpetrators; enhanced penalties.--

(1) The Legislature finds that an act of sexual battery, when committed by more than one person, presents a great danger to the public and is extremely offensive to civilized society. It is therefore the intent of the Legislature to provide enhanced penalties for acts of sexual battery committed by more than one person.

(2) The penalty for a violation of s. 794.011 shall be increased as provided in this subsection if it is charged and proven by the prosecution that, during the same criminal transaction or episode, more than one person committed an act of sexual battery on the same victim.

(a) A felony of the second degree shall be punishable as if it were a felony of the first degree.

(b) A felony of the first degree shall be punishable as if it were a life felony.

This subsection does not apply to life felonies or capital felonies.

History.--s. 4, ch. 84-86.

794.027 Duty to report sexual battery; penalties.--A person who observes the commission of the crime of sexual battery and who:

(1) Has reasonable grounds to believe that he has observed the commission of a sexual battery;

(2) Has the present ability to seek assistance for the victim or victims by immediately reporting such offense to a law enforcement officer;

(3) Fails to seek such assistance;

(4) Would not be exposed to any threat of physical violence for seeking such assistance;

(5) Is not the husband, wife, parent, grandparent, child, grandchild, brother, or sister of the offender or victim, by consanguinity or affinity; and

(6) Is not the victim of such sexual battery

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.--s. 3, ch. 84-86.

794.03 Unlawful to publish or broadcast information identifying sexual offense victim.--No person shall print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense within this chapter. An offense under this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 1, ch. 6226, 1911; RGS 5053; CGL 7155; s. 2, ch. 74-121; s. 16, ch. 75-298.

794.041 Sexual activity with child by or at solicitation of person in familial or custodial authority; penalties.--

(1) For the purposes of this section, the term "sexual activity" means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.

(2) Any person who stands in a position of familial or custodial authority to a child 12 years of age or older but less than 18 years of age and who:

(a) Solicits that child to engage in sexual activity is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Engages in sexual activity with that child is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) The willingness or consent of the child is not a defense to prosecution under this section.

History.--s. 2, ch. 84-86.

794.05 Carnal intercourse with unmarried person under 18 years. --

(1) Any person who has unlawful carnal intercourse with any unmarried person, of previous chaste character, who at the time of such intercourse is under the age of 18 years, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) It shall not be a defense to a prosecution under this section that the prosecuting witness was not of previous chaste character at the time of the act when the lack of previous chaste character in the prosecuting witness was caused solely by previous intercourse between the defendant and the prosecuting witness.

History.--RS 2598; s. 1, ch. 4965, 1901; GS 3521; s. 1, ch. 6974, 1915; s. 1, ch. 7732, 1918; RGS 5409; s. 1, ch. 8596, 1921; CGL 7552; s. 1, ch. 61-109; s. 759, ch. 71-136.

796.01 Keeping house of ill fame.--Whoever keeps a house of ill fame, resorted to for the purpose of prostitution or lewdness, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 13, ch. 1637, 1868; RS 2615; GS 3535; RGS 5433; CGL 7576; s. 764, ch. 71-136; s. 1, ch. 81-281.

cf.--s. 60.05 Abatement of nuisances.

s. 921.242 Subsequent offenses under ch. 796; method of proof applicable.

796.02 Lease of house to expire on conviction. --When the lessee of a dwelling house is convicted of the offense mentioned in the preceding section, the lease or contract for letting the house shall, at the option of the lessor, become void, and the lessor shall have the like remedy to recover the possession as against a tenant holding over after the expiration of his term.

History. --s. 14, ch. 1637, 1868; RS 2616; GS 3536; RGS 5434; CGL 7577.

796.03 Procuring person under age of 16 for prostitution.--Whoever procures for prostitution, or causes to be prostituted, any person who is under the age of 16 years shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--RS 2617; GS 3537; RGS 5435; CGL 7578; s. 765, ch. 71-136; s. 1, ch. 78-45.

cf.--s. 921.242 Subsequent offenses under ch. 796; method of proof applicable.

796.04 Forcing, compelling, or coercing another to become a prostitute.--

(1) After May 1, 1943, it shall be unlawful for anyone to force, compel, or coerce another to become a prostitute.

(2) Anyone violating this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--ss. 1, 2, ch. 21661, 1943; s. 766, ch. 71-136.

cf.--s. 921.242 Subsequent offenses under ch. 796; method of proof applicable.

796.05 Living off earnings of prostitute.--

(1) After May 1, 1943, it shall be unlawful for anyone to live off the earnings of any other person with the knowledge or reasonable cause to believe that such earnings are derived from prostitution.

(2) Anyone violating this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--ss. 1, 2, ch. 21662, 1943; s. 767, ch. 71-136; s. 2, ch. 81-281.

cf.--s. 921.242 Subsequent offenses under ch. 796; method of proof applicable.

796.06 Renting space to be used for lewdness, assignation, or prostitution.--

(1) After May 1, 1943, it shall be unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that such place, structure, trailer, or conveyance will be used for the purpose of lewdness, assignation, or prostitution.

(2) Anyone violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.--ss. 1, 2, ch. 21663, 1943; ss. 1, 2, ch. 22025, 1943; s. 768, ch. 71-136.

cf.--s. 921.242 Subsequent offenses under ch. 796; method of proof applicable.

796.07 Prohibiting prostitution, etc.; evidence; penalties; definitions.--

(1) As used in this section, unless the context clearly requires otherwise:

(a) The term "prostitution" shall be construed to include the giving or receiving of the body for sexual intercourse for hire, and shall also be construed to include the giving or receiving of the body for licentious sexual intercourse without hire.

(b) The term "lewdness" shall be construed to include any indecent or obscene act.

(c) The term "assignation" shall be construed to include the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

(d) The term "prostitution" as used in paragraph (a) shall be construed so as to exclude sexual intercourse between a husband and his wife.

(2) After May 1, 1943, it shall be unlawful in the state:

(a) To keep, set up, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.

(b) To offer, or to offer or agree to secure, another for the purpose of prostitution, or for any other lewd or indecent act.

(c) To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose.

(d) To direct, take, or transport, or to offer or agree to take or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation.

(3) It shall further be unlawful in the state:

(a) To offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.

(b) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation with himself or herself.

(c) To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation.

(d) To aid, abet, or participate in the doing of any of the acts or things enumerated in subsections (2) and (3) of this section.

(e) To purchase the services of any person engaged in prostitution.

(4) In the trial of any persons charged with the violation of any of the provisions of this section, testimony concerning

the reputation of any place, structure, building, or conveyance involved in said charge, and of the person or persons who reside in, operate, or frequent the same, and of the defendant, shall be admissible in evidence in support of the charge.

(5) Any person who violates any provision of this section shall be deemed guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--ss. 1, 2, 3, 4, 5, ch. 21664, 1943; s. 769, ch. 71-136; s. 3, ch. 81-281.

cf.--s. 921.242 Subsequent offenses under ch. 796; method of proof applicable.

797.02 Advertising drugs, etc., for abortion. --Whoever knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper notice, advertisement, or reference containing words or language giving or conveying any notice, hint, or reference to any person, or the name of any person, real or fictitious, from whom, or to any place, house, shop, or office where any poison, drug, mixture, preparation, medicine, or noxious thing, or any instrument or means whatever, or any advice, direction, information, or knowledge may be obtained for the purpose of causing or procuring the miscarriage of any woman pregnant with child, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History. --s. 10, ch. 1637, 1868; RS 2619; GS 3539; RGS 5437; CGL 7580; s. 771, ch. 71-136.

797.03 Prohibited acts; penalties.--

(1) It is unlawful for any person to perform or assist in performing an abortion on a person, except in an emergency care situation, other than in a validly licensed hospital or abortion clinic or in a physician's office.

(2) It is unlawful for any person or public body to establish, conduct, manage, or operate an abortion clinic without a valid current license.

(3) It is unlawful for any person to perform or assist in performing an abortion on a person in the third trimester other than in a hospital.

(4) Any person who willfully violates any provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.--s. 10, ch. 78-382.

cf.--ch. 390 Termination of pregnancies.

798.01 Living in open adultery.--Whoever lives in an open state of adultery shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Where either of the parties living in an open state of adultery is married, both parties so living shall be deemed to be guilty of the offense provided for in this section.

History.--s. 1, ch. 1986, 1874; RS 2595; GS 3518; RGS 5406; CGL 7549; s. 772, ch. 71-136.

798.02 Lewd and lascivious behavior. --If any man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior, they shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History. --s. 6, ch. 1637, 1868; RS 2596; GS 3519; RGS 5407; CGL 7550; s. 773, ch. 71-136.

800.02 Unnatural and lascivious act. --Whoever commits any unnatural and lascivious act with another person shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History. --s. 1, ch. 7361, 1917; RGS 5425; CGL 7568; s. 778, ch. 71-136.

800.03 Exposure of sexual organs. --It shall be unlawful for any person to expose or exhibit his sexual organs in any public place or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or so to expose or exhibit his person in such place, or to go or be naked in such place. Provided, however, this section shall not be construed to prohibit the exposure of such organs or the person in any place provided or set apart for that purpose. Any person convicted of a violation hereof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History. --s. 1, ch. 7360, 1917; RGS 5445; CGL 7588; s. 1, ch. 61-51; s. 779, ch. 71-136.

800.04 Lewd, lascivious, or indecent assault or act upon or in presence of child; sexual battery.--Any person who:

(1) Handles, fondles or makes an assault upon any child under the age of 16 years in a lewd, lascivious, or indecent manner;

(2) Commits an act defined as sexual battery under s. 794.011(1)(h) upon any child under the age of 16 years; or

(3) Knowingly commits any lewd or lascivious act in the presence of any child under the age of 16 years

without committing the crime of sexual battery is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Neither the victim's lack of chastity nor the victim's consent is a defense to the crime proscribed by this section.

History.--s. 1, ch. 21974, 1943; s. 1, ch. 26580, 1951; s. 780, ch. 71-136; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 40, ch. 75-298; s. 291, ch. 79-400; s. 5, ch. 84-86.

cf.--s. 775.15 Time limitations.

s. 787.01 Kidnapping.

s. 787.02 False imprisonment.

s. 914.16 Child abuse and sexual abuse victims under age 16; limits on interviews.

847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.--

(1)(a) A person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene, lewd, lascivious, filthy, indecent, sadistic, or masochistic book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion-picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument of indecent use, or purporting to be for indecent use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or

indirectly, stating, or purporting to state, where, how, of whom, or by what means any, or what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person to do or assist in doing, either knowingly or innocently, any act or thing mentioned above, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of a violation of this subsection, thereafter violates any of its provisions, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The knowing possession by any person of six or more identical or similar materials, matters, articles, or things coming within the provisions of paragraph (a) is presumptive evidence of the violation of said paragraph.

(2) A person who knowingly has in his possession, custody, or control any obscene, lewd, lascivious, filthy, indecent, sadistic, or masochistic book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion-picture film, film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be

transmuted into auditory, visual, or sensory representations of such character, or any article or instrument of indecent use, or purporting to be for indecent use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it shall not be necessary to allege or prove the absence of such intent.

(3) No person shall as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, or publication require that the purchaser or consignee receive for resale any other article, paper, magazine, book, periodical, or publication reasonably believed by the purchaser or consignee to be obscene, lewd, lascivious, filthy, indecent, sadistic, or masochistic, and no person shall deny or threaten to deny or revoke any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure of any person to accept any such article, paper, magazine, book, periodical, or publication, or by reason of the return thereof. Whoever violates this subsection is guilty of a felony of the third

degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who knowingly promotes, conducts, performs, or participates in an obscene, lewd, lascivious, or indecent show, exhibition, or performance by live persons or a live person before an audience is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who, after having been convicted of violating this subsection, thereafter violates any of its provisions and is convicted thereof is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Every act, thing, or transaction forbidden by this section shall constitute a separate offense and shall be punishable as such.

(6) Proof that a defendant knowingly committed any act or engaged in any conduct referred to in this section may be made by showing that at the time such act was committed or conduct engaged in he had actual knowledge of the contents or character of the material, matter, article, or thing possessed or otherwise dealt with, or by showing facts and circumstances from which it may fairly be inferred that he had such knowledge, or by showing that he had knowledge of such facts and circumstances as would put a man of ordinary intelligence and caution on inquiry as to such contents or character.

(7) There shall be no right of property in any of the materials, matters, articles, or things possessed or otherwise dealt with in violation of this section; and, upon the seizure of any such material, matter, article, or thing by any authorized law enforcement officer, the same shall be delivered to and held by the clerk of the court having jurisdiction to try such violation. When the same is no longer required as evidence, the prosecuting officer or any claimant may move the court in writing for the disposition of the same and after notice and hearing, the court, if it finds the same to have been possessed or otherwise dealt with in violation of this section, shall order the sheriff to destroy the same in the presence of the clerk; otherwise, the court shall order the same returned to the claimant if he shows that he is entitled to possession. If destruction is ordered, the sheriff and clerk shall file a certificate of compliance.

(8)(a) The circuit court has jurisdiction to enjoin a threatened violation of this section upon complaint filed by the state attorney or attorney for a municipality in the name of the state upon the relation of such state attorney or attorney for a municipality.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney or attorney for a

municipality requests a judge of such court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within 3 days after the making of such request. No such order shall be made unless such judge is satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for such restraining order is to be made, provided, however, that such notice shall be dispensed with when it is manifest to such judge, from the sworn allegations of the complaint or the affidavit of the plaintiff or other competent person, that the apprehended violation will be committed if an immediate remedy is not afforded.

(c) The person sought to be enjoined shall be entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days of the conclusion of the trial.

(d) In the event that a final decree of injunction is entered, it shall contain a provision directing the defendant having the possession, custody, or control of the materials, matters, articles, or things affected by the injunction to surrender the same to the sheriff and requiring the sheriff to seize and destroy the same. The sheriff shall file a certificate of his compliance.

(e) In any action brought as provided in this subsection, no bond or undertaking shall be required of the state attorney or the municipality or its attorney before the issuance of a restraining order provided for by paragraph (b), and there shall be no liability on the part of the state or the state attorney or the municipality or its attorney for costs or for damages sustained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(f) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon him of a summons and complaint in an action for injunction brought under this subsection, is chargeable with knowledge of the contents and character thereof.

(9) The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

(10) This section shall not apply to the exhibition of motion-picture films permitted by s. 847.013.

(11) For the purposes of this section, the test of whether or not material is obscene is: Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.

(12) For the purposes of this section, the word "person" includes individuals, firms, associations, corporations, and all other groups and combinations.

History.--ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 61-7; s. 1053, ch. 71-136; ss. 1A-3A, 4, 5A, 6, ch. 71-337; s. 171, ch. 71-355; s. 34, ch. 73-334.

cf.--s. 235.09 Obscenity on educational buildings.

s. 933.02 Issuance of search warrant.

847.012 Prohibition of sale or other distribution of harmful materials to persons under 18 years of age; penalty.--

(1) As used in this section:

(a) "Juvenile" means any person under the age of 18 years.

(b) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state.

(c) "Sexual conduct" means acts of masturbation; homosexuality; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast.

(d) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask, or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(f) "Harmful to juveniles" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

1. Predominantly appeals to the prurient, shameful, or morbid interest of juveniles,

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for juveniles, and

3. Is, considered as a whole, without serious literary, artistic, political, or scientific value for juveniles.

(g) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

1. The character and content of any material described herein which is reasonably susceptible of examination by the defendant, and

2. The age of the juvenile; however, an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such juvenile.

(2) It is unlawful for any person knowingly to sell or loan for monetary consideration to a juvenile:

(a) Any picture, photograph, drawing, sculpture, motion-picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to juveniles, or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a), or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to juveniles.

(3) Any person violating any provision of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Every act, thing, or transaction forbidden by this section constitutes a separate offense and is punishable as such.

(5)(a) The circuit court has jurisdiction to enjoin a violation of this section upon complaint filed by the state attorney in the name of the state upon the relation of such state attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney requests a judge of such court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within 3 days after the making of such request. No such order shall be made unless such judge is satisfied that sufficient notice of the application therefor has been given

to the party restrained of the time when and place where the application for such restraining order is to be made.

(c) The person sought to be enjoined shall be entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days of the conclusion of the trial.

(d) In the event that a final decree of injunction is entered, it shall contain a provision directing the defendant having the possession, custody, or control of the materials, matters, articles, or things affected by the injunction to surrender the same to the sheriff and requiring the sheriff to seize and destroy the same. The sheriff shall file a certificate of his compliance.

(e) In any action brought as provided in this section, no bond or undertaking shall be required of the state or the state attorney before the issuance of a restraining order provided for by paragraph (b), and there shall be no liability on the part of the state or the state attorney for costs or for damages sustained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(f) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon him of a summons and complaint in an action for

injunction brought under this section, is chargeable with knowledge of the contents and character thereof.

(6) The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

(7) For the purposes of this section, the word "person" includes individuals, firms, associations, corporations, and all other groups and combinations.

(8) This section does not apply to the exhibition of motion pictures, shows, presentations, or other representations regulated under the provisions of s. 847.013.

History.--ss. 1, 2, 3, 4, 5, 6, 7, ch. 67-153; ss. 1, 2, ch. 69-41; s. 1054, ch. 71-136; s. 171, ch. 71-355; s. 34, ch. 73-334; s. 1, ch. 83-77.

cf.--s. 827.071 Sexual performance by a child; penalties.

847.0125 Retail display of materials harmful to minors prohibited.--

(1) DEFINITIONS.--As used in this section:

(a) "Minor" means any person under the age of 18 years.

(b) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state.

(c) "Sexual conduct" means acts of masturbation; homosexuality; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast or any act or conduct which constitutes the commission of the abominable and detestable crime against nature or suggests that such crime is being or will be committed.

(d) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask, or a bizarre costume or the condition of being fettered, bound, or otherwise physically restrained and subjected to flagellation or torture on the part of one so clothed.

(f) "Harmful to minors" means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

1. Predominantly appeals to the prurient, shameful, or morbid interest of minors,

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and

3. Is without serious literary, artistic, political, or scientific value for minors.

(g) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

1. The character and content of any material described herein which is reasonably susceptible of examination by the defendant, and

2. The age of the minor; however, an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

(2) OFFENSES AND PENALTIES.--

(a) It is unlawful for anyone offering for sale in a retail establishment open to the general public any book, magazine, or other printed material the cover of which depicts nudity

which is harmful to minors, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is on open display to, or within the convenient reach of, minors who may frequent the retail establishment. Such items may, however, be displayed behind an opaque covering which conceals the nudity, provided such items are not within the convenient reach of minors who may frequent the retail establishment.

(b) It is unlawful for anyone offering for sale in a retail establishment open to the general public any book, magazine, or other printed material, the content of which exploits, is devoted to, or is principally made up of descriptions or depictions of nudity which are harmful to minors, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is within the convenient reach of minors who may frequent the retail establishment.

(c) A violation of any provision of this section constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 1, ch. 78-273; s. 1, ch. 79-96; s. 2, ch. 83-77.

847.013 Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.--

(1) DEFINITIONS.--As used in this section:

(a) "Minor" means any person under the age of 18 years.

(b) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state.

(c) "Sexual conduct" means acts of masturbation; homosexuality; sexual intercourse; physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast or any act or conduct which constitutes the commission of the abominable and detestable crime against nature or suggests that such crime is being or will be committed.

(d) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask, or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(f) "Harmful to minors" means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

1. Predominantly appeals to the prurient, shameful, or morbid interest of minors,

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors, and

3. Is without serious literary, artistic, political, or scientific value for minors.

(g) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

1. The character and content of any motion picture described herein which is reasonably susceptible of examination by the defendant, or the character of any exhibition, presentation, representation, or show described herein, other than a motion-picture show, which is reasonably susceptible of being ascertained by the defendant, and

2. The age of the minor; however, an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

(2) OFFENSES AND PENALTIES.--